

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs at Knoxville November 27, 2007

BOYD W. MOLLOY v. RICKY BELL, WARDEN

Appeal from the Criminal Court for Davidson County
No. 3850 Seth Norman, Judge

No. M2007-01337-CCA-R3-HC - Filed February 27, 2008

The pro se petitioner, Boyd W. Molloy, appeals as of right the Davidson County Criminal Court's summary dismissal of his petition for a writ of habeas corpus. The petitioner alleges that he is entitled to habeas corpus relief because his sentence was imposed in violation of Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531 (2004). Following our review, we affirm the judgment of the habeas corpus court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which NORMA MCGEE OGLE and ALAN E. GLENN, JJ., joined.

Boyd W. Molloy, Pro Se, Nashville, Tennessee.

Robert E. Cooper, Jr., Attorney General & Reporter; Cameron L. Hyder, Assistant Attorney General; Victor S. Johnson, District Attorney General; and Dan Hamm, Assistant District Attorney General, Nashville, Tennessee, attorneys for appellee, State of Tennessee.

OPINION

The record reflects that the petitioner was originally indicted for three counts of rape of a child. On June 19, 2001, the petitioner pled guilty to the amended charge of one count of rape, a Class B felony. In exchange for his guilty plea, the petitioner agreed to testify truthfully against a codefendant who was also alleged to have had intercourse with the victim. The trial court imposed the agreed sentence of ten years as a Range I, standard offender to be served at one hundred percent pursuant to Tennessee Code Annotated section 40-35-501(i)(1) & (2)(G).

The petitioner filed his first petition for a writ of habeas corpus on August 31, 2004, alleging that his sentence was void in light of Blakely. The habeas court summarily dismissed the petition, and this court affirmed the habeas court's judgment by memorandum opinion. State v. Boyd Molloy, No. M2004-03055-CCA-R3-HC, 2005 WL 3736531 (Tenn. Crim. App. Nov. 18, 2005). On April 20, 2007, the petitioner filed the petition for a writ of habeas corpus that is the subject of this appeal.

The present petition again alleges that the ten year sentence represents an illegal and void judgment because the trial court improperly enhanced the sentence beyond the statutory minimum of eight years in violation of Blakely and its progeny, including Cunningham v. California, 549 U.S. ____, 127 S.Ct. 856 (2007) and this court's opinion in State v. Schiefelbein, 230 S.W.3d 88 (Tenn. Crim. App. 2007).

ANALYSIS

Tennessee law provides that “[a]ny person imprisoned or restrained of his liberty under any pretense whatsoever . . . may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment.” Tenn. Code Ann. § 29-21-101. Habeas corpus relief is limited and available only when it appears on the face of the judgment or the record of proceedings below that a trial court was without jurisdiction to convict the petitioner or that the petitioner's sentence has expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). To prevail on a petition for a writ of habeas corpus, a petitioner must establish by a preponderance of the evidence that a judgment is void or that a term of imprisonment has expired. See State ex rel. Kuntz v. Bomar, 214 Tenn. 500, 504, 381 S.W.2d 290, 291-92 (1964). If a petition fails to state a cognizable claim, it may be dismissed summarily by the trial court without further inquiry. See State ex rel. Byrd v. Bomar, 214 Tenn. 476, 483, 381 S.W.2d 280, 283 (1964); Tenn. Code Ann. § 29-21-109. We note that the determination of whether to grant habeas corpus relief is a matter of law; therefore, we will review the habeas corpus court's finding de novo without a presumption of correctness. McLaney v. Bell, 59 S.W.3d 90, 92 (Tenn. 2001).

Initially, this court notes that the record is devoid of any proof that the convicting trial court imposed the ten year sentence based upon any findings of enhancement factors. Rather, the record indicates that the petitioner agreed to the sentence of ten years in exchange for the reduced charge of rape and the dismissal of the remaining two counts of rape of a child. Furthermore, this allegation has been previously ruled upon in a prior petition. Therefore, the petitioner is precluded from raising it in a subsequent petition. See Gant v. State, 507 S.W.2d 133, 137 (Tenn. Crim. App. 1973), cert. denied (Tenn. 1974) (a petitioner may not use habeas corpus proceedings as a means to re-litigate previously litigated claims). Finally, this court has consistently held that Blakely challenges are not cognizable in collateral proceedings. See Billy Merle Meeks v. Ricky J. Bell, Warden, No. M2005-00626-CCA-R3-HC, 2007 WL 4116486, at *12 (Tenn. Crim. App. Nov. 13, 2007). Based upon these considerations, we conclude that the habeas court properly dismissed the petition for a writ of habeas corpus.

CONCLUSION

Based upon the foregoing, we conclude that the summary dismissal of the petition for a writ of habeas corpus was proper. The judgment of the habeas court is affirmed.

D. KELLY THOMAS, JR., JUDGE